IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 846 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.BUCH

and

Hon'ble MR.JUSTICE H.H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

STATE OF GUJARAT

Versus

SULEMAN ADAM UMARJI PATEL

Appearance:

MR BD DESAI, APP for Petitioner

MR MANOJ N POPAT for Respondent No. 1, 3, 4

NOTICE SERVED for Respondent No. 2

CORAM : MR.JUSTICE C.K.BUCH

and

MR.JUSTICE H.H.MEHTA

Date of decision: 20/02/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE C.K.BUCH)

1. This appeal is preferred by the State of Gujarat against the judgment and order of acquittal recorded by the ld. Addl. Sessions Judge, Bharuch on 29.3.1985 in Sessions Case No. 75/84. Respondents are the original accused and for the sake of convenience, we have referred them, hereinafter, as the accused. All the Accused were charged for the offences punishable under sections 323, 324, 452, 504, 302 and 114 of IPC, but came to be acquitted extending benefit of doubt, by the trial Court.

2. According to the prosecution, on 8.4.1984, original complainant Ibrahim Ahmed Ismail, resident of village Machha of district Bharuch, was sitting on the ota of his house at about 4.00 P.M. along with his brother-in-law Isap Mohamed Yusuf Master. On that day, people of the village of the complainant Ibrahim were celebrating festival of "Chhatthi" and one "Guruji" had come to that village for the occasion. Several followers of "Guruji" residing in the nearby villages were also visiting the village and "Guruji" had stayed at the house of one of his followers. Many visiters of neighbouring villages were there in the village in the evening on the date of incident. At that time, accused no.1 Suleman Adam Umarji Patel, accused no.2 Yusuf Mohmed Umarji Patel, accused Nn.3 Mustak Mohmed Umarji Patel and accused no.4 Ismail Umarji came to the house of prosecution witness Vali Umar. P.W. Vali Umar is brother-in-law of the complainant Ibrahim. According to the prosecution, accused nos. 1 to 3 picked up quarrel with Vali Umar and accused no.3 Mustak gave fist blows to Vali Umar and he sustained injury on the left eye. Complainant Ibrahim and his brother-in-law Isap Mohamed Master who were sitting on their ota, went to the place of quarrel and they rescued Vali Umar from further assault at the hands of accused nos. 1 to 3. It is the further case of the prosecution that thereafter the complainant and his brother-in-law Isap Mohamed Master, returned to their house and to the otas. At about 6.00 P.M., when complainant Ibrahim and his brother-in-law Isap Mohamed Master were sitting on the ota all the accused came there armed with weapons and assaulted complainant Ibrahim. As per the prosecution, accused no.1 gave a blow with "Ada" (a wooden bar used in a bullock cart) on the head of the complainant Ibrahim and accused no.2 Yusuf Mohamed gave a blow with axe on the right arm of the complainant Ibrahim, that complainant Ibrahim with a view to save himself went inside his

house. According to the prosecution, thereafter, accused no.1 gave a blow with Ada on the head of Isap Mohamed Master who fell on the ota sustaining injury on the head. It is said that accused no.3 chased complainant Ibrahim to his house and gave a blow with knife on the neck and chin; that accused no.4 armed with "Tabetha", wielded the same with a view to cause injury to the complainant Ibrahim. Accused persons thereafter ran away from the place of incident. According to the prosecution, P.W. Vali Umar was present there and he had seen the incident and had also seen the accused running away from the place of incident. Injured Ibrahim and Isap Mohamed Master were initially taken to Civil Hospital, Bharuch for treatment and they were advised to go to SSG Hospital, Baroda for further and better treatment. Considering the nature of head injuries sustained by Isap Mohamed Master, he was taken to a Neuro Surgeon on 9.4.84 by the relatives, but ultimately succumbed to injuries and expired during treatment in the hospital of Neuro Surgeon. The body of the deceased was sent to SSG Hospital by the concerned doctor and post mortem was performed. On account of the death of Isap Mohamed Master, police altered offences and offence punishable under sec.302 of IPC was registered against all the accused and at the end of investigation, police chargesheeted all the accused persons for the offences referred to herein above in para-1 of the judgment. At the conclusion of trial, the ld. trial Judge, vide impugned judgment, acquitted the accused by extending benefit of doubt to them.

3. Ld. APP Mr. Desai has assailed the impugned judgment and order of acquittal on various grounds. However, he has concentrated on two major aspects. According to Mr. Desai, this is not a case of false implication and the role played by each of the accused has been described by the complainant. Version of the complainant before the Court is consistent with the FIR and, therefore, trial Court ought to have convicted all the accused by accepting the say of the complainant Ibrahim. After referring to the relevant part of FIR exh.27 and depositions of three doctors examined by the prosecution, Mr. Desai has submitted that the story unfolded by the complainant Ibrahim gets enough corroboration from FIR and the medical evidence adduced by the prosecution. So, according to Mr. Desai, this is not a case of uncorroborated testimony of an interested witness. He has further submitted that though pancha witnesses have not supported the case of the prosecution intoto,but their say gives some strength to the story of the prosecution. Evidence of P.W. Vali Umar, being an

injured witness, ought not to have been ignored by the trial Court. NC complaint lodged by P.W. Vali Umar ought to have been considered as a corroborative piece of evidence and the ld. trial Judge on these two pieces of oral-documentary evidence, ought to have held that the prosecution has satisfactorily proved the element of motive for assault on the complainant and his brother-in-law deceased Isap Mohamed Master.

4. We have gone through the impugned judgment and order of acquittal recorded by the ld. trial Judge and reasons for recording acquittal. We are of the view that each piece of evidence has been properly appreciated by the ld. trial Judge and he has recorded findings on each separate piece of evidence including panchanamas, complaint exh.27 and NC complaint exh.29. Ld. trial Judge has also considered medical certificates issued by the doctor of Civil Hospital, Bharuch, Neuro Surgeon who had performed operation on the person of the deceased and the facts reflected in the Post Mortem Notes exh.42.

5. After careful consideration of the oral as well as documentary evidence referred to above, we are of the view that the finding of the ld. trial Judge is absolutely in accordance with law as no material error has been committed by him. Element of perversity is totally missing. Ld. APP has failed in pointing out any material factual or legal error from the judgment. On the contrary, we find that the prosecution has not unfolded the correct story of the incident. Non-examination of independent eye-witness though available, has been given due weightage by the trial Court. P.W. Vali Umar is an interested witness. He had named two persons viz. Noor Mohamed and Makbul Umarji as witnesses to the incident of first quarrel in his NC complaint exh.29. None of these two witnesses are examined by the prosecution. There is no injury certificate on record by which injuries on the body or person of P.W. Vali Umar could have been explained satisfactorily and beyond doubt. More than one prosecution witnesses have admitted that it was the day of a festival in a small village having a population of about 500 to 600 people. Most of the persons were participating in the festival and a Pandal was also erected, to be used as Kitchen-cum-Dining Hall, and for entertainment programme of Quawali.In a small village like Machha, one can reasonably infer that independent persons would have been available to the Investigating Officer who could have unfolded story of the incident in an objective manner. Applying the correct principles of criminal jurisprudence, ld. trial Judge, while recording

finding of acquittal, has considered this aspect i.e. aspect of non-examination of independent witnesses though available.

6. Production of blood-stained Tabetha by the mother of the injured Ibrahim during the course of investigation on the 2nd day i.e. on 9.4.1984 though her statement was recorded by the Investigating Officer on the very same day of incident i.e. on 8.4.1984, is an act of a person interested in the result of the case and we are satisfied that the recovery of muddamal Tabetha by an Investigating Agency on drawing very formal panchanama, has been rightly appreciated. Muddamal Ada or axe or knife allegedly used by the accused nos. 1 to 3 were not sent for examination to FSL. Surprisingly, Tabetha was sent for examination and on analysis, Tabetha was found stained with human blood. Learned trial Judge has rightly criticised this aspect which goes to the root of the objectivity of the investigation. In the same way, panchanama exh.36 drawn under sec. 27 of the Evidence Act proved by P.W.8 Bhogilal (exh.34), is properly appreciated by the ld. trial Judge. Ld. trial Judge, after appreciating evidence exh.18, deposition of Revenue Circle Inspector, has positively concluded that complainant could not have seen the incident allegedly occurred at the house of P.W. Vali Umar and, therefore, finding qua inadequate proof as to the motive cannot be said to be improper or illegal. Even NC complaint exh.29 does not say that complainant Ibrahim had intervened when P.W. Vali Umar was being beaten by accused nos. 1 to 3. Merely because two of the witnesses examined by the prosecution had sustained injury, their version cannot be accepted as a gospel truth. Evidence of each witness has to be scrutinised with care and caution when undisputely they are the partisan witnesses and their version is not getting sufficient corroboration from any independent witness or from cogent and convincing circumstances. Character of a witness examined by the prosecution and his experience qua court proceedings is also relevant and political rivalry between two families is also satisfactorily brought on record.

7. Ld. trial Judge has carefully considered the medical evidence and tried to conclude that there was ample opportunity for the prosecution to record statement of deceased Isap Mohammed Yusuf Master. It is in evidence that this injured must have remained conscious for some period. Even it was not the say of the Investigating Officer that when he met the injured Isap Mohammed for the first time, he was unconscious. There is no positive evidence under which it could be inferred

as to when injured Isap Mohammed became unconscious in absence of case papers of SSG Hospital, Baroda and evidence of the doctor who admitted injured Isap Mohammed in the hospital which is very much relevant more particularly when Doctor of Civil Hospital, Bharuch has specifically opined that injured Isap Mohammed was conscious when he was examined and treated by him. Investigating Officer has not even cared to arrange for recording of DD of the injured Isap Mohammed. He has not even cared to record the statement of the injured though he had interrogated both the injured persons at an initial stage of the inquiry. Hence, acquittal recorded by the ld. trial Judge giving benefit of doubt to the accused, in our view, is absolutely legal and interference is not warranted at all.

8. We are not inclined in drawing a note of principles propounded by the Apex Court and followed by this Court wherein it has been observed that under which circumstances, acquittal order should be interfered with. According to us, after around a lapse of 16 years, a reasonable and prudent order of acquittal should not be reversed.

9. For the reasons aforesaid, appeal fails and is hereby dismissed. Impugned judgment and order of acquittal recorded by the ld. Addl. Sessions Judge, Bharuch in Sessions Case No.75/84 on 29.3.1985, is hereby confirmed. If respondents are on bail, their bail bonds stand discharged.

20.2.2001 [C.K.BUCH, J]

[H.H. MEHTA,J]

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